



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

Reporting, Recordkeeping, Daily Trading Records, and Swap Documentation

Requirements for Swap Dealers and Major Swap Participants; Corrections

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making correcting amendments in its regulations concerning swap documentation, swap reporting, and daily trading records requirements to conform those regulations to previous amendments of other regulations, and to correct other minor errors. These correcting amendments do not substantively affect any Commission requirements.

DATES: Effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Matthew Jones, Attorney Advisor, (202) 418-6710, majones@cftc.gov, or Philip Newsom, Attorney Advisor; pnewsom@cftc.gov, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In September 2020, the Commodity Futures Trading Commission (Commission) adopted final rules to revise, among other things, part 45 of its regulations on swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, swap execution facilities, designated contract markets, swap dealers (SDs), major swap participants (MSPs), and swap counterparties that are neither SDs nor MSPs.¹ Part 23 of the Commission's

¹ Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020) (the "2020 Final Rule") (updating the Commission regulations in part 45 in addition to parts 46 and 49).

regulations contains multiple cross-references to, and relies on terms defined in, part 45 of the Commission's regulations. The Commission has identified the following errors in part 23 relating to part 45 as well as certain other similar errors, and is correcting them as shown in the regulatory text in this *Federal Register* document.

In accordance with the Administrative Procedure Act, the Commission has good cause to find that it is unnecessary to provide the public prior notice and an opportunity to comment on these technical amendments.² As more fully described below, the amendments make only typographical and clerical changes that are necessary to avoid confusion or mistakes. There is no substantive change on which the public could comment. As the revisions to the Commission's regulations in this rulemaking are only technical in nature and will not cause any party to undertake any new obligations, the Commission has determined to publish this rulemaking without prior notice and comment. Similarly, because the Commission is not promulgating, changing, or deleting any regulatory requirement, consideration of costs and benefits and consideration of the public interest to be protected by the antitrust laws are not required by the Commodity Exchange Act.³ Finally, these correcting amendments do not implicate any requirements under the Paperwork Reduction Act of 1995.⁴

A. Correcting cross-references

Commission regulation §23.202 (Daily trading records)⁵ erroneously cross-references Commission regulations §45.4(a), (b), and (c). The Commission is correcting the cross-references to Commission regulations §§45.5, 45.6, and 45.7, respectively.

² See 5 U.S.C. 553(b)(3)(B).

³ See 7 U.S.C. 19(b).

⁴ See 44 U.S.C. 3501 *et seq.*

⁵ 17 CFR 23.202.

Commission regulation §23.205(a) (Real-time public reporting of swap transaction and pricing data)⁶ erroneously cross-references the real-time public “recording” requirements in part 43 of the Commission’s regulations. The Commission is correcting the reference to replace the word “recording” with the word “reporting.”

B. Updating the term “Unique Transaction Identifier”

The Commission is replacing the term unique swap identifier (USI) with the term unique transaction identifier (UTI). The Commission previously updated part 45 to make this change,⁷ but did not make the necessary conforming changes in part 23 where it is referenced.⁸

C. Updating the term “Legal Entity Identifier”

The Commission is updating and conforming its references to a counterparty’s identifier to clarify that a counterparty must provide its legal entity identifier (LEI) or, when applicable, an alternate identifier.⁹ Part 23 does not consistently use the term LEI (in one instance using the term unique counterparty identifier instead),¹⁰ and does not clearly address the full set of circumstances when a counterparty may use an alternate identifier in lieu of an LEI, but rather only provides for the use of an alternate identifier where the counterparty is a natural person.¹¹

D. Updating use of the term “Unique Product Identifier”

The Commission is updating and conforming its references to a swap’s unique product identifier (UPI) to clarify that the swap trading record shall include the UPI and

⁶ 17 CFR 23.205(a).

⁷ See 2020 Final Rule at 75515 (“The Commission is amending § 45.5 to adopt requirements for UTIs, the globally accepted transaction identifier, replacing USIs in existing § 45.5.”)

⁸ See 17 CFR 23.202(a)(2)(iii) and 17 CFR part 23, subpart I, appendix 1, Exhibits A through D.

⁹ The Commission previously updated part 45 to allow a counterparty that is not eligible to receive an LEI to use an alternate identifier. See 2020 Final Rule at 75527.

¹⁰ See 17 CFR 23.202(a)(2)(v).

¹¹ See 17 CFR part 23, subpart I, appendix 1, Exhibits A through D.

description using the product classification system as prescribed in part 45, when applicable.¹² Commission regulation §23.202(a)(2)(vii) does not address the possibility that a swap may not have a UPI.¹³

E. Updating example of a floating rate

The Commission is replacing the example floating rate in Exhibit C of part 23, subpart I, appendix 1, to use “Fed Funds.” Exhibit C currently uses the outdated “USD-Libor-BBA” as an example for the field labeled Floating rate index name/rate period.¹⁴

List of Subjects in 17 CFR Part 23

Reporting and recordkeeping requirements, Swaps, Trading records.

For the reasons stated in the preamble, 17 CFR part 23 is corrected by making the following correcting amendments:

PART 23 – SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111-203, 124 Stat. 1641 (2010).

2. In § 23.202, revise paragraphs (a)(2)(iii), (v), and (vii) to read as follows:

§ 23.202 Daily trading records.

(a) * * *

(2) * * *

¹² See Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2166 (Jan. 13, 2012) (explaining that each swap must be identified by a UPI and product classification system, when applicable).

¹³ See 17 CFR 23.202(a)(2)(vii).

¹⁴ 17 CFR part 23, subpart I, appendix 1, Exhibit C. The British Bankers Association no longer administers the London Interbank Offered Rate (LIBOR), and the ICE Benchmark Administration Limited has decided to cease the publication of all remaining LIBOR settings on June 30, 2023. See Announcements on the end of LIBOR, March 5, 2021, available at: <https://www.fca.org.uk/news/press-releases/announcements-end-libor>. See also ICE Benchmark Administration Publishes Feedback Statement for the Consultation on Its Intention to Cease the Publication of LIBOR® Settings, March 5, 2021, available at: <https://ir.theice.com/press/news-details/2021/ICE-Benchmark-Administration-Publishes-Feedback-Statement-for-the-Consultation-on-Its-Intention-to-Cease-the-Publication-of-LIBOR-Settings/default.aspx>.

(iii) The unique transaction identifier, as required by § 45.5 of this chapter, for each swap;

* * * * *

(v) The name of the counterparty with which each such swap was executed, including its legal entity identifier or alternate identifier, as required by § 45.6 of this chapter;

* * * * *

(vii) The product name of each swap, including its unique product identifier and description using the product classification system, as required by § 45.7 of this chapter;

* * * * *

3. In § 23.205, revise paragraph (a) to read as follows:

§ 23.205 Real-time public reporting.

(a) *Real-time public reporting of swap transaction and pricing data.* Each swap dealer and major swap participant shall report all information and swap transaction and pricing data required to be reported in accordance with the real-time public reporting requirements in part 43 of this chapter.

* * * * *

4. In appendix 1 to subpart I of part 23:

a. In Exhibit A:

i. Remove the entry for “The Unique Swap Identifier for the swap” and add the entry “The Unique Transaction Identifier for the swap” in its place;

ii. Remove the entry “The Legal Entity Identifier of the reporting counterparty” and add the entry “The Legal Entity Identifier or alternate identifier of the reporting counterparty” in its place;

iii. Remove the entry “The Legal Entity Identifier of the non-reporting party” and add the entry “The Legal Entity Identifier or alternate identifier of the non-reporting party” in its place; and

iv. Revise the entries for “An indication of the counterparty purchasing protection”, “An indication of the counterparty selling protection”, and “Information identifying the reference entity”.

b. In Exhibit B:

i. Remove the entry for “The Unique Swap Identifier for the swap” and add the entry “The Unique Transaction Identifier for the swap” in its place;

ii. Remove the entry “The Legal Entity Identifier of the reporting counterparty” and add the entry “The Legal Entity Identifier or alternate identifier of the reporting counterparty” in its place; and

iii. Remove the entry “The Legal Entity Identifier of the non-reporting party” and add the entry “The Legal Entity Identifier or alternate identifier of the non-reporting party” in its place.

c. In Exhibit C:

i. Remove the entry for “The Unique Swap Identifier for the swap” and add the entry “The Unique Transaction Identifier for the swap” in its place;

ii. Remove the entry “The Legal Entity Identifier of the reporting counterparty” and add the entry “The Legal Entity Identifier or alternate identifier of the reporting counterparty” in its place;

iii. Remove the entry “The Legal Entity Identifier of the non-reporting counterparty” and add the entry “The Legal Entity Identifier or alternate identifier of the non-reporting counterparty” in its place; and

iv. Revise the entry for “Floating rate index name/rate period”.

d. In Exhibit D:

i. Remove the entry for “The Unique Swap Identifier for the swap” and add the entry “The Unique Transaction Identifier for the swap” in its place;

ii. Remove the entry “The Legal Entity Identifier of the reporting counterparty” and add the entry “The Legal Entity Identifier or alternate identifier of the reporting counterparty” in its place;

iii. Remove the entry “The Legal Entity Identifier of the non-reporting party” and add the entry “The Legal Entity Identifier or alternate identifier of the non-reporting party” in its place; and

iv. Revise the entries for “Buyer” and “Seller”.

The additions and revisions read as follows:

Part 23, Subpart I, Appendix 1 – Exhibits A-D

Exhibit A - Minimum Primary Economic Terms Data - Credit Swaps and Equity Swaps

Data categories and fields for all swaps	Comment
* * * * *	
The Unique Transaction Identifier for the swap	The UTI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier or alternate identifier of the reporting counterparty	As provided in § 45.6 of this chapter.
* * * * *	
The Legal Entity Identifier or alternate identifier of the non-reporting party	As provided in § 45.6 of this chapter.
* * * * *	
An indication of the counterparty purchasing protection	Field values: LEI, or alternate identifier.
An indication of the counterparty selling protection	Field values: LEI, or alternate identifier.
Information identifying the reference entity	The entity that is the subject of the protection being purchased and sold in the swap. Field values: LEI, or alternate identifier.
* * * * *	

Exhibit B - Minimum Primary Economic Terms Data - Foreign Exchange Transactions

[Other than cross-currency swaps]

Data fields for all swaps	Comment
* * * * *	
The Unique Transaction Identifier for the swap	The UTI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier or alternate identifier of the reporting counterparty	As provided in § 45.6 of this chapter.
* * * * *	
The Legal Entity Identifier or alternate identifier of the non-reporting party	As provided in § 45.6 of this chapter.
* * * * *	

Exhibit C - Minimum Primary Economic Terms Data - Interest Rate Swaps

[Including cross-currency swaps]

Data fields for all swaps	Comment
* * * * *	
The Unique Transaction Identifier for the swap	The UTI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier or alternate identifier of the reporting counterparty	As provided in § 45.6 of this chapter.
* * * * *	
The Legal Entity Identifier or alternate identifier of the non-reporting counterparty	As provided in § 45.6 of this chapter.
* * * * *	
Floating rate index name/rate period	<i>E.g., Fed Funds.</i>
* * * * *	

Exhibit D - Minimum Primary Economic Terms Data - Other Commodity Swaps

Data fields for all swaps	Comment
* * * * *	
The Unique Transaction Identifier for the swap	The UTI is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration.
The Legal Entity Identifier or alternate identifier of the reporting counterparty	As provided in § 45.6 of this chapter.
* * * * *	
The Legal Entity Identifier or alternate identifier of the non-reporting party	As provided in § 45.6 of this chapter.
* * * * *	

Buyer	The counterparty purchasing the product: (E.g., the payer of the fixed price (for a swap), or the payer of the floating price on the underlying swap (for a put swaption), or the payer of the fixed price on the underlying swap (for a call swaption). Field values: LEI, if available, or alternate identifier.
Seller	The counterparty offering the product: (E.g., the payer of the floating price (for a swap), the payer of the fixed price on the underlying swap (for a put swaption), or the payer of the floating price on the underlying swap (for a call swaption). Field values: LEI, or alternate identifier.
* * * * *	

Issued in Washington, DC, on January 26, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Reporting, Recordkeeping, Daily Trading Records, and Swap Documentation Requirements for Swap Dealers and Major Swap Participants; Corrections – Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

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